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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/660,027	09/12/2000	William J. Rowe	CASE 1	6144
22046	7590	05/12/2004	EXAMINER	
LUCENT TECHNOLOGIES INC. DOCKET ADMINISTRATOR 101 CRAWFORDS CORNER ROAD - ROOM 3J-219 HOLMDEL, NJ 07733			KADING, JOSHUA A	
		ART UNIT		PAPER NUMBER
		2661		5
DATE MAILED: 05/12/2004				

Please find below and/or attached an Office communication concerning this application or proceeding.

P6

Office Action Summary	Application No.	Applicant(s)
	09/660,027	ROWE, WILLIAM J.
	Examiner Joshua Kading	Art Unit 2661

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 3/11/04.
 2a) This action is FINAL. 2b) This action is non-final.
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 8 is/are pending in the application.
 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
 5) Claim(s) _____ is/are allowed.
 6) Claim(s) 8 is/are rejected.
 7) Claim(s) _____ is/are objected to.
 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
 10) The drawing(s) filed on 9-12-00 is/are: a) accepted or b) objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

- 5 (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

10 Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over Jones et al. (WO 00 28712). It should be noted that in the previous Office Action, the 35 U.S.C. 102 rejections relied on the same reference as above; however, the reference from the previous Office Action was identified as Chen et al. instead of Jones et al. This was a 15 typographical error and the correct identification is Jones et al.

Regarding claim 8, Jones discloses "a method for use in connection with a cable modem system having a cable modem terminating system module and a spectrum analyzer each having a communication port, the method comprising the step of searching for a candidate channel having a specified bandwidth within the spectrum 20 allocated for use as upstream channels that are indicated by said spectrum analyzer to have an acceptable noise level over a prescribed period of time (pg. 63, lines 18-33 searching for a candidate channel is the same as monitoring the upstream channels)." 25

However, Jones lacks "said searching step failed to find a channel with an acceptable noise level over said prescribed period, the method further comprising the 25 steps of: reducing said prescribed period of time; and repeating said searching step."

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Although Jones specifically lacks a "reducing of time" and "repeating said searching step", Jones does disclose "said searching step failed to find a channel with an acceptable noise level over said prescribed period, the method further comprising the steps of: reducing said specified bandwidth (pg. 65, lines 13-30); and repeating said 5 searching step (pg. 66, lines 1-7 where this is saying that the searching step is performed if needed, such as in the event of a previous searching failure)."

As a matter of design choice, it would have been obvious to one of ordinary skill in the art at the time of invention to "reduce the time" instead of the bandwidth and "repeat said searching step". The motivation is that search parameters (i.e. reducing 10 bandwidth and the time period) are dependent on the design of the system and the search strategy, not applicant's invention. That is to say, the general concept of changing a search parameter and repeating the search is not novel and the search criteria used rely completely on the design of the system being searched, thus are dictated by design.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Joshua Kading whose telephone number is (703) 305-0342. The examiner can normally be reached on M-F: 8:30AM-5PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's 20 supervisor, Douglas Olms can be reached on (703) 305-4703. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only.

- 5 For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Joshua Kading
Examiner
Art Unit 2661

10 May 6, 2004



KENNETH VANDERPUYE
PRIMARY EXAMINER